

DECISION



28018
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-214477

DATE: April 18, 1984

MATTER OF: Overtime Compensation for Firefighters

DIGEST:

Decisions in Matter of Overtime Compensation for Firefighters, 62 Comp. Gen. 216 (1983) and Matter of Gipson, B-208831, April 15, 1983, held that where a firefighter's overtime compensation under the Fair Labor Standards Act is reduced as a result of court leave or military leave, the firefighter is entitled to receive the same amount of compensation as he would normally receive for his regularly scheduled tour of duty in a biweekly work period. The decisions in Firefighters and Gipson are retroactively effective since they involve an original construction by this Office of the court leave and military leave provisions. 5 U.S.C. §§ 6322 and 6323.

This matter is in response to inquiries to this Office concerning whether the decisions of this Office in Matter of Overtime Compensation for Firefighters, 62 Comp. Gen. 216 (1983) and Matter of Gipson, B-208831, April 15, 1983, are to be retroactively applied. It has recently come to our attention that several firefighters employed by the Department of the Air Force have filed claims for retroactive overtime compensation as a result of the Firefighters and Gipson decisions. Apparently, none of these claims have been allowed and it is the understanding of these firefighters that the Air Force has determined that the decision in Firefighters should only be applied prospectively. The holding in Firefighters and Gipson should be applied retroactively and any claims arising from these decisions are subject to the 6-year limitations on claims set forth in 31 U.S.C. § 3702(b).

In Firefighters we held that under the court leave provision, 5 U.S.C. § 6322, firefighters are entitled to receive the same amount of pay as they would otherwise receive under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., notwithstanding periods of court leave during their regularly scheduled tour of duty. We ruled that the firefighters were entitled to receive the same compensation,

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including the amount of overtime pay that would have been paid under the Act, since the court leave provision, 5 U.S.C. § 6322, expressly provides that an employee is entitled to leave for jury duty without reduction or loss of pay. We noted that a similar provision pertaining to Federal employees on military leave who are engaged in training in the Reserves or National Guard is set forth at 5 U.S.C. § 6323. Accordingly, in Matter of Gipson, B-208831, April 15, 1983, we held that when a firefighter's overtime under the Fair Labor Standards Act is reduced as a result of military leave, the firefighter is entitled, under 5 U.S.C. § 6323, to the same amount of pay that he would otherwise receive for his regularly scheduled tour of duty in a biweekly pay period notwithstanding periods of military leave.

The view has been expressed by at least some officials of the Air Force that the decision in Firefighters is prospectively effective only. That is, the decision operates to allow only those claims which accrued after the date the decision in Firefighters was issued. The basis for this view, is that we have held that where a decision of this Office has the effect of clarifying the purpose of a statute in a manner which is inconsistent with a not unreasonable interpretation of the provision by the agency responsible for its implementation, the result is a changed construction of the law and will be applied prospectively. It has been noted by these Air Force officials that, as set forth in Firefighters, the Office of Personnel Management had previously determined that the court leave provision did not affect the firefighters' entitlement to compensation which they otherwise would have received under the Fair Labor Standards Act and that we did not indicate that such determination was unreasonable. The Office of Personnel Management had also construed the military leave provision in the same manner as the court leave statute for the purpose of firefighters' entitlement to overtime compensation.

We wish to point out that the Office of Personnel Management's views on the effect of court leave and military leave on firefighters' entitlement to overtime compensation were not based on any regulations issued by that Office. The Office of Personnel Management has not issued any regulations to implement the court leave provision at

5 U.S.C. § 6322. Furthermore, that Office does not have any statutory authority to promulgate regulations to implement the military leave provision at 5 U.S.C. § 6323.

Generally, decisions of this Office involving the original construction of a statute, such as in Firefighters and Gipson, apply retroactively to the date that the statute first went into effect. See 40 Comp. Gen. 14, 17-18 (1960); and 39 Comp. Gen. 455, 456 (1959). As an exception to this rule we have given prospective effect to some decisions which reversed administrative determinations by the agency responsible for implementing a provision of statute. In those cases the effect was to preclude collection action against individuals who in good faith had received payments from the Government on the basis of the invalidated administrative determinations. See 54 Comp. Gen. 890 (1975), 24 Comp. Gen. 688 (1945) and Matter of Kornreich, B-170589, August 8, 1974. These cases are exceptional and ordinarily a decision of first impression is effective retroactively. See Matter of Secrest, B-210827, September 21, 1983. The decisions in Firefighters and Gipson are not contrary to any regulations promulgated by the Office of Personnel Management and they do not overrule any determination made by that Office on the applicability of the Fair Labor Standards Act. They merely interpret the right of these employees to pay under the court leave and military leave statutes under which the Office of Personnel Management had issued no pertinent regulations.

Therefore, the decisions of this Office in Firefighters and Gipson are deemed to be retroactively effective. Claims for retroactive payment of overtime compensation based on the holdings in the decisions may be considered to the extent that the claims are not barred by the 6-year statute of limitations set forth at 31 U.S.C. § 3702(b).

for 
Comptroller General
of the United States